



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 08-12

May 22, 2009

**Petition of Verizon New England Inc. for Amendment of the Cable Division's Form 500
"Cable Operator's Annual Report of Consumer Complaints"**

**PROCEDURAL NOTICE
AND ISSUANCE OF
SUPPLEMENTAL PROCEDURAL GROUND RULES**

I. INTRODUCTION

On March 27, 2009, the Department of Telecommunications and Cable ("Department") issued a Request for Comment and Notice of Public Hearing ("March 27 Notice") as well as an Order for Notice for docket D.T.C. 08-12. The March 27 Notice specified that this proceeding "has been docketed as ... a formal adjudicatory proceeding conducted under G. L. 30A and 220 C.M.R. § 1.00 *et seq.* of the Standard Adjudicatory Rules of Practice and Procedure." March 27 Notice at 3. The Department's procedural rules are set forth in 220 C.M.R. § 1.00 *et seq.*

On April 13, 2009, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon") filed a Proof of Notice with the Department in accordance with 220 C.M.R. § 1.06(5)(d), whereby Verizon notified the Department that notice of the Public Hearing was published in the Boston Globe newspaper on April 3, 2009, and that Verizon served copies of the March 27 Notice upon all local franchising authorities in Massachusetts and all parties who participated in the proceedings arising from *Annual Report of Verizon New England Inc. of Complaints Received Regarding FiOS TV Service: MA Form 500 Complaint Report* (where Verizon requested confidential treatment for certain information on its Form 500 filed on January 31, 2007).

The Department received numerous written public comments and several intervention requests prior to the noticed Public Hearing and Procedural Conference. A list of these public comments and intervention requests is attached to the instant Notice ("Exhibit No. D.T.C.-1").

Pursuant to the March 27 Notice, on May 15, 2009, the Department conducted the Public Hearing followed immediately by a Procedural Conference for docket D.T.C. 08-12. Not all parties who requested intervention attended the Procedural Conference. To memorialize determinations made at the Procedural Conference, including the procedural schedule that was set for the remainder of the proceeding, the Hearing Officer hereby provides this Procedural Notice as well as supplemental procedural ground rules for docket D.T.C. 08-12. This Notice will be provided not only to parties listed on the Service List, but also to any other commenters listed on Exhibit No. D.T.C.-1.

II. REQUESTS FOR INTERVENTION

Prior to the Public Hearing and Procedural Conference, the Department received several written requests for intervention, a petition for party status, and a petition for limited participant status. *See* Exhibit No. D.T.C.-1. The Hearing Officer granted all of these requests during the Procedural Conference.

III. AFFIDAVITS REQUIRED IN ORDER TO MAKE WRITTEN COMMENTS A PART OF THE EVIDENTIARY RECORD

In accordance with the Department's established practice and 220 C.M.R. § 1.10(1) (stating "[...] [a]ll unsworn statements appearing in the record shall not be considered as evidence on which a decision may be based"), the Hearing Officer notified attendees of the Public Hearing that statements could not be made a part of the evidentiary record unless the statements were made under oath but further specified that the Department would consider and listen with equal attentiveness to any unsworn statements. During both the Public Hearing and the Procedural Conference, the Hearing Officer clarified that this requirement also extended to any written comments received by the Department for docket D.T.C. 08-12.

Certain parties and members of the public requested clarification as to the weight of any unsworn statements and written comments. As a result of ensuing discussions with Verizon, intervening parties, and participating members of the public present at the Public Hearing and Procedural Conference, the Hearing Officer agreed to allow anyone who filed written comments prior to the Public Hearing and Procedural Conference the opportunity to submit to the Department signed affidavits by town representatives attesting to the truth of any factual statements made in those comments. Any further or supplemental comments from non-parties will not be accepted. The Hearing Officer is merely affording commenters the opportunity to swear to the truthfulness of their previously filed comments for purposes of incorporating previously filed comments into the evidentiary record.

Therefore, the Hearing Officer ruled at the Procedural Conference that any written comments filed as of the Procedural Conference could be supplemented only by signed and sworn affidavits by town officials within 21 days of the issuance of the instant Notice. **Please be advised that any further filings in docket D.T.C. 08-12 shall be filed in accordance with the ground rules set forth below.**

IV. PROCEDURAL SCHEDULE

During the Procedural Conference, the Hearing Officer established the procedural schedule going forward for the above captioned case. **Please note that no evidentiary hearing has been scheduled.** If any party to the instant proceeding deems that an evidentiary hearing is necessary, then that party shall file a timely request for a hearing along with the reasons for the need for the hearing with the Department and the Service List. *See* G. L. c. 30A, § 10 (specifying that agencies may “place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing[.]”).

May 15, 2009	Public Hearing and Procedural Conference
May 22, 2009	Department issues Procedural Notice.
June 12, 2009	Affidavits for written comments received prior to the Procedural Conference are due
June 19, 2009	Deadline for Department and Parties to Issue Information Requests
July 6, 2009	Responses to Information Requests due
July 27, 2009	Initial legal briefs due
August 10, 2009	Reply legal briefs due

V. SERVICE LIST

A revised Service List is attached to the instant Notice.

VI. GROUND RULES

This proceeding shall be conducted in accordance with applicable provisions of G. L. c. 30A, 220 C.M.R. §§ 1.00 *et seq.*, and the following supplemental ground rules:

A. Filing of Documents

1. Address of Filings

The original of all filings must be filed with Catrice C. Williams, Secretary, Department of Telecommunications and Cable, Two South Station, Fourth Floor, Boston, Massachusetts, 02110. In addition, one (1) copy of all filings must be submitted to each person listed on the Service List. Submission of an electronic version of all filings to the Department Secretary and the Service List by close of business on the applicable due date with overnight mail of the original to the Department and first-class mail of copies to the Service List is acceptable. **Please be aware that not all parties have provided email contact information.**

2. Format

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information: (1) set and question number; (2) recitation of request; and (3) identity of person who will support the response.

3. Number of Copies for Paper Filings

The Department requires paper documents to be filed in the following manner:

One (1) original addressed to Catrice C. Williams,
One (1) copy submitted to each listed hearing officer,
One (1) copy submitted to each Department staff member listed on the Service List, and
One (1) copy submitted to each other person listed on the Service List.

4. Electronic Filing

Copies of all nonproprietary documents that are filed with the Department, including letters, comments, pleadings and briefs, must also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dtc.efiling@massmail.state.ma.us and catrice.williams@state.ma.us; or (2) on a 3.5" floppy disk or CD-ROM. The text of the e-mail or the disk label must specify: (1) an easily identifiable case caption, (2) docket number, D.T.C. 08-12, (3) name of the party submitting the filing, and (4) title of the document. The electronic filing should also include the name, title, and phone

number of a person to contact in the event of questions about the filing. Electronic copies should be written as either Microsoft Word or Adobe Acrobat compatible files. Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's website in its File Room within 5 business days at <http://www.mass.gov/dtc>. Electronic copies must also be provided to all persons on the service list for this proceeding who have provided email addresses. Parties filing documents containing proprietary or other confidential materials shall submit electronic copies of the redacted public version of such documents. See rules on protected materials below.

B. Exchange of Materials

All documents filed with the Department shall also be served upon each party. These parties are listed in the docket's Service List, which may be amended from time to time. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission ("fax"), e-mail, or other speedy means of delivery. Where material is exchanged by means of fax or other electronic means, a follow-up copy of the material must be delivered by mail or by hand. **Service is effective upon receipt, not upon mailing.** Fax or other means of electronic delivery are not substitutes for filing the original of materials that must be filed with Catrice C. Williams, Secretary of the Department.

Where information requests are sent to a party by means of fax, the fax must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the deadline for response by the receiving party.

C. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. The moving party shall serve with the motion a statement of reasons, including the supporting authorities, why the motion should be granted. A statement of reasons may be included in the motion itself or may be contained in a separate document. **Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion.** A party opposing a motion may serve an opposition (1) within seven (7) calendar days after service of a motion other than a motion for summary judgment, (2) twenty-one (21) calendar days after service of a motion for summary judgment, or (3) such additional time as is allowed by the Department upon a showing of good cause. With the opposition, the party may serve a statement of reasons, with supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be served with the opposition. Papers not served with the motion or opposition may be filed only with leave of the hearing officer.

D. Discovery

1. Responses

Parties shall provide responses to information requests within seventeen (17) calendar days of issuance of the request. Where the computed response date is a legal holiday, the response shall be due on the next Department business day.

2. Protected Materials

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. *See* G. L. c. 25, § 5D; G. L. c. 66, § 10; G. L. c. 4, § 7, cl. twenty-sixth.

A party moving for confidential treatment must submit its request in writing and state the reasons therefor. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

Any request for confidential treatment must include, in a sealed envelope, one unredacted copy of the materials for which protection is sought, clearly marked with the words “CONFIDENTIAL” on the outside envelope as well as on each page of the materials. Electronic copies of unredacted materials should be submitted on a 3.5" floppy disk or CD-ROM labeled “CONFIDENTIAL.” The unredacted copy should be submitted directly to the hearing officer, not to the Secretary. A redacted copy of the materials (marked as such) for the public docket should be filed with the Department along with the request for confidential treatment.

3. Discovery Disputes

Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each request for proprietary treatment or other information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

E. CONCLUSION

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

/s/ Kerri J. DeYoung

Kerri J. DeYoung
Hearing Officer

cc: Service List D.T.C. 08-12
Commenters listed in Exhibit No. D.T.C.-1